be due not only to the city as a municipal body, but to the public, considered as composed of individuals. *Heeney* v. *Sprague,* 11 R. I. 456; *City of Hartford* v. *Talcott,* 48 Conn. 525.

PARENT AND CHILD—CUSTODY OF MINOR CHILD.—Plaintiff was the mother of an illegitimate child, and, not being able to care for it at the time of its birth, gave its custody to a Mrs. Pearse. During Mrs. Pearse's last illness, defendant, her sister, cared for the child, and after Mrs. Pearse's death, defendant took the child into her own custody. Mr. Pearse, shortly afterwards, secured from the plaintiff a document giving him the custody of the child, and the lower court found as a fact that plaintiff intended to give the child to him if she obtained its custody. All three parties are in comfortable circumstances financially and they are all fit persons for the custody of the child. *Held,* the child should be left with defendant and not given to the mother, who had twice shown her willingness to give up her right to the child. *Broxholm* v. *Parks* (Colo. 1914), 141 Pac. 994.

The case illustrates the extent to which courts will go in overriding a parent's bare legal right to the custody of his child, in looking out for the best interest of the child. As the child was illegitimate, the mother had the legal right to its custody. And if the court had not found that plaintiff's sole object was to turn the child's custody over to Mr. Pearse, she ought to have been entitled to recover its custody. While in a case of this kind, the best interest of the child is the paramount consideration, the parent's right to custody of the child cannot be lightly ignored. To refuse the custody of a child to its parent, it must usually be shown that the parent is unfit, by reason of improper morals or habits, and that the child would be actually endangered in its life, health, moral or permanent happiness. The parent, if of good moral character and able to support the child in his own style of life, cannot be deprived of the custody of his children. *Hernandez* v. *Thomas,* 50 Fla. 522, 2 L. R. A. (N. S.) 203; *Stapleton* v. *Poynter,* 111 Ky. 264, 53 L. R. A. 784; *Titus* v. *McGlosky,* 67 N. J. Eq. 709; *In re Neff,* 20 Wash. 652. But since the court took the view that the question of the custody of the child was really between Mr. Pearse and the defendant, the only consideration to guide the court was the best interest of the child.

SALES—IMPLIED WARRANTY NOT EXCLUDED BY EXPRESS WARRANTY.—Defendant sold plaintiff an auto truck. In the bill of sale there was an express warranty that the machine was well made and of good material. Then followed the provision, "This express warranty excludes all implied warranties." The machine was not fit for the purpose for which it was bought. Plaintiff brought suit in equity to rescind the contract, and recover the purchase price. Defendant pleaded that the express warranty excluded all implied warranties. *Held,* that the implied warranty of fitness was not excluded by the express warranty, *International Harvester Co. of America* v. *Bean,* (Ky. 1914), 169 S. W. 548.

An express warranty will exclude an implied warranty on the same or closely related subjects. *Thomas* v. *Thomas,* 146 Ala. 533; *Nave* v. *Gross,* 146 Ill. App. 104; *Sullivan Machinery Co.* v. *Breeden,* 40 Ind. App. 631; *Guhy* v. *Nichols & S. Co.,* 33 Ky. L. Rep. 237. But an express warranty does not

exclude an implied warranty on a subject wholly different from the express warranty. *Barber & Son* v. *Singletary,* 13 Ga. App. 171, 78 S. E. 1100; *Pew Co.* v. *Karley,* 154 Iowa 559, 134 N. W. 529; *Fruit and Truck Ass'n* v. *Hartman,* 146 Mo. App. 155; *Bucy* v. *Pittsburg Agri. Works,* 89 Ia. 464; *Merriam* v. *Field,* 24 Wis. 640. Where the express warranty relates merely to the size, condition or quality of the machine, an implied warranty of fitness is not excluded. *Snyder* v. *Holt Mfg. Co.,* 134 Cal. 324; *North Alaska etc. Co.* v. *Hobbs, etc. Co.,* 159 Cal. 381; *Cook* v. *Darling,* 160 Mich. 475; *Boulware* v. *Manufacturing Co.,* 152 Mo. App. 567; *Blackmore* v. *Fairbanks, Morse & Co.,* 79 Ia. 282. In the principal case, the court held that the provision regarding the exclusion of all implied warranties was ambiguous, and gave effect to the evident intent of the parties.

TRUSTS—CONSTRUCTIVE TRUST OF STOLEN PROPERTY.—Defendant was a foreman in plaintiff's gold mine and had the care of sluice boxes containing gold dust and nuggets; he stole some of this gold and sold it, receiving therefor money and a bank draft which were found on his person when he was arrested for the larceny, and which passed into the custody of the clerk of the court in which he was tried and convicted. Upon defendant's request that the court return the money and draft to him, plaintiff filed its bill asking that defendant be declared a trustee of the same for plaintiff's benefit. *Held,* that equity would impress a trust on such property in favor of the beneficial owner, so long as it had not passed into the hands of a bona fide holder for value, without notice. *Pioneer Mining Co.* v. *Tyberg,* (C. C. A. 9th Circuit 1914) 215 Fed. 501.

The case clearly illustrates the elastic quality of equitable doctrines and is supported by *Aetna Indemnity Co.* v. *Malone,* 89 Neb. 260; *Nebraska Nat'l Bank* v. *Johnson,* 51 Neb. 546; *Borchert* v. *Borchert,* 132 Wis. 593; *Lightfoot,* v. *Davis,* 198 N. Y. 261; and *Newton* v. *Porter,* 69 N. Y. 133. It would indeed seem, as remarked by the court in the case last cited, "to be an anomaly in the law, if the owner who has been deprived of his property by a larceny, should be less favorably situated in a court of equity, in respect to his remedy to recover it, or the property into which it had been converted, than one who by an abuse of trust has been injured by the wrongful act of a trustee, to whom the possession of trust property has been confided." But such has not always been the view of the courts of that state, *Pascoag Bank* v. *Hunt,* 3 Edw. Ch. 583. Few cases other than those cited in the principal case have been found where the same question was passed on. Another Nebraska case in point is that of *Lamb* v. *Rooney,* 75 Neb. 322. See also *Farmers' & Traders' Bank* v. *Kimball M. Co.,* 1 S. D. 388. Cases analogous in principle but differing on their facts have frequently given rise to the application of the doctrine of constructive trusts. Such are those holding that land or money obtained by fraud, artifice, etc., will be impressed with a trust for the benefit of those defrauded. *Morse* v. *Vyse,* 154 Mich. 253; *Ruhe* v. *Ruhe,* 113 Md. 595; *Watson* v. *Harris* (Tex. Civ. App.) 130 S. W. 237; *Morris* v. *Kendall,* 48 Ind. App. 304; *Batty* v. *Greene,* 206 Mass 561; *Ragsdale* v. *Ragsdale,* 68 Miss. 92; *Gilpatrick* v. *Glidden,* 81 Me. 137.